**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE SIDE, JURISDICTION**

**CRIMINAL APPLICATION NO.3485 OF 2005**

The State of Maharashtra )
(At the instance of PI, )
Police Station, Sangola, ) APPLICANT
District : Solapur.) )(Org.Complainant)

**Versus**

1. Shivaji Damu Narle, )
   Age: 36 years. )

2. Khushaba Yeshwant Ganganbhale, )
   Age: 29 years. )

3. Mahadev Yeshwant Ganganbhale, )
   Age: 36 years. )

4. Bharat Yeshwant Ganganbhale, )
   Age: 33 years. )

5. Yeshwant Babu Ganganbhale, )
   Age: 64 years. )

6. Vilas Yeshwant Ganganbhale, ) RESPONDENTS
   Age: 37 years. ) (Original
) Accused Nos.
   All R/o. Lonarwadi, ) 1 to 6.)
   Taluka Pandharpur. )

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Smt.V.R.Bhosale, APP for the Applicant-State.
Mr.S.S.Shah, Advocate for the Respondents.

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**CORAM : D.G.DESHPANDE &**
**SMT.V.K.TAHILRAMANI, JJ.**

**DATED : MARCH 28, 2006.**

**ORAL JUDGMENT (PER TAHILRAMANI,J.)**

. The applicant i.e. the State of Maharashtra has filed this application for leave to file an appeal

against the order of acquittal passed by the learned IInd Additional Sessions Judge, Pandharpur on 9th December, 2004 in Sessions Case No.72 of 1998. By the said judgment and order, the learned Additional Sessions Judge acquitted the respondent Nos.1 to 6 i.e. original accused Nos.1 to 6 of the offences under Sections 143, 147, 302 read with 149 of IPC or in the alternative under Section 302 read with 34 of IPC.

2. It is the prosecution case that on 8.3.1998 all the accused persons committed the murder of Chagan by throttling him. It is a specific case of the prosecution that accused Nos.1 and 6 throttled Chagan and caused his death.

3. We have heard Smt.V.R.Bhosale, learned APP for the applicant-State and Mr.S.S.Shah learned Advocate for the respondents. We have perused the judgment and order passed by the learned Sessions Judge as well as the evidence in the said case, which has been produced by the learned APP.

4. The learned APP has pointed out that there are two eye witnesses in the present case i.e. P.W.3 Motiram Bad and P.W.4 Sandipan Bad. The incident in the present case has occurred on the night of 8th March, 1998. The dead body of Chagan came to be found

by Ganpat Galve at 2:30 a.m. on 9th March, 1998. P.W.4 Sandipan Bad has claimed that he was working near the land where the incident took place. While returning from the land where he was working, he heard hue and cry and hence on going to the spot he noticed the incident. It is noticed that the statement of P.W.3 Motiram Bad came to be recorded on 16th March, 1998 and that of P.W.4 Sandipan Bad came to be recorded on 17th March, 1998. Though, both of them claimed to have witnessed the incident, they have not informed the Police or any one about seeing the incident. It is only on 16th March, 1998 and 17th March, 1998 that these witnesses came forward and their statements came to be recorded. No plausible explanation has been given by the prosecution regarding the delay in recording their statements. As far as respondent Nos.1,2 & 4 to 6 are concerned, there is no recovery of any article at their instance. However, it is seen that there is recovery of rope at the instance of accused No.3. Both the panch witnesses in respect of the recovery have turned hostile. Besides this, the C.A. report in relation to the rope does not connect respondent No.3/accused no.3 with the offence. Besides this, there is no material against any of the accused persons.

5. The learned Sessions Judge has given above

reasons as well as some other plausible reasons for the acquittal, in the impugned judgment. We do not want to overburden this judgment by repeating them here. It is well settled that if the order of acquittal could have been reasonably arrived at, then the mere circumstance that the appellate court could have taken a different view would be no ground to interfere. In this connection, there are no dearth of authorities, but, to eschew prolixity we are only referring to one of them i.e. **1997 (1) Mh.L.J.770 State of Maharashtra Vs. Balram @ Nam Amarsingh Talwar.** It has been observed in para 12 of the decision in 1997 (1) Mh.L.J.770 that:-

> "12. At the very outset, we would like to point out that we are seized of the matter in an appeal against acquittal. It is well settled that unless appreciation of evidence is clearly unreasonable or the impugned order of acquittal is vitiated by some illegality, this court does not interfere in an appeal against acquittal. It is equally well settled that if the view of acquittal is a possible view then this Court does not interfere in spite of the fact that it may feel that had it been the trial Court, it may have taken a different view. We are fortified in our view by the decisions of the Apex Court reported in **AIR 1971 SC 66 Khedu Mohton and Ors. Vs. State of Bihar and AIR 1987 SC 1083 Tota Singh Vs State of Punjab.** We also feel that in this connection, it would be pertinent to refer to the decision of the Apex Court reported in **1995(2) SCC 486, State of Punjab Vs. Ajaib Singh,** where in para 7, Their Lordships of the Apex Court observed thus:-
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> > " We agree that this Court is not precluded or the court hearing the appeal against acquittal is not prevented from examining and reappreciating the evidence on record. But the duty of a court hearing the

> appeal against acquittal in the first instance is to satisfy itself if the view taken by acquitting court exercising appellate jurisdiction was possible view or not. And if the court comes to conclusion that it was not, it can on reappreciation of evidence reverse the order."

6. In our view, the view of acquittal was a reasonable and possible view. There is no illegality or impropriety in the judgment passed by the learned Sessions Judge. In the circumstance, we find no merit in this matter and the same is dismissed.

**(D.G.DESHPANDE,J.)**

**(SMT.V.K.TAHILRAMANI,J.)**